IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

RCRev..No. 449 of 2004()

{R.C.A.NO.130/2001 OF THE ADDITIONAL DISTRICT COURT,
[RENT CONTROL APPELLATE AUTHORITY], KOZHIKODE
IN R.C.P.NO.94/1998 OF THEADDITIONAL MUNSIFF,
KOZHIKODE-II}
.....

REVISION PETITIONER/APPELLANT/RESPONDENT:

PUTHIYA PARAMBATH DASAN,
AGED 50 YEARS, S/O.RARUKUTTY,
PUTHIYA PARAMBATH,
OLAVLANNA AMSOM KODAL DESOM
OF KOZHIKODE TALUK.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS/PETITIOENRS:
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1. *M.V.MUHAMED, AGED 53 YEARS,*
   S/O.IMBICHIKOYA HAJI.

2. *M.V.KHADEEJA, AGED 51 YEARS,*
   D/O.IMBICHIKOYA HAJI.

3. *M.V.ABDUL HAMEED, AGED 48 YEARS,*
   S/O.IMBICHIKOYA HAJI.

4. *M.V.ABUBACKER, AGED 44 YEARS,*
   S/O.IMBICHIKOYA HAJI.

5. *M.V.ABDUL LATHEEF, AGED 42 YEARS,*
   S/O.IMBICHIKOYA HAJI.

6. M.V.ABDUL GAFOOR, AGED 38 YEARS, S/O.IMBICHIKOYA HAJI.

7. M.V.ABDUL SALEEM, AGED 36 YEARS, S/O.IMBICHIKOYA HAJI.

8. M.V.MUMTAZ, AGED 33 YEARS, D/O.IMBICHIKOYA HAJI.

9. M.V.MUHAMED SHAFEEQUE, AGED 30 YEARS, S/O.IMBICHIKOYA HAJI.

10. M.V.SADIQUE, AGED 28 YEARS, S/O.IMBICHIKOYA HAJI.

11. M.V.RAHANA, AGED 26 YEARS, D/O.IMBICHIKOYA HAJI. THE RESPONDENTS ARE RESIDING AT MULIYIL VELUTHEL HOUSE, OLAVANNA AMSOM AND DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3858/04 IN R.C.R.NO.449/04

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
16.01.2007. JUDGE

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

R.C.R.No.449 of 2004

Dated this the 16th day of January, 2007.

O R D E R

UDAYABHANU, J.

The revision petitioner is the tenant under orders of eviction in the petition filed by the landlords/respondents under Sections 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as 'the Act'} which were found in favour of the landlord concurrently.

2. The revision petitioner submitted that the 10th respondent, for whom the premises were sought for starting an Accountant's office being a practising Accountant, has obtained permanent employment in the Government as High School Assistant and hence, the above ground under Section 11(3) of the Act no longer survives. Counsel for the respondents conceded this aspect, so far as S.11(3) is concerned.

3. So far as the ground under Section 11(2)(b) of the Act, counsel for the revision petitioner has pointed that as per A5 notice, the landlords had claimed rental arrears from November, 1992 onwards at the rate of Rs.200/-. As per A1 counterfoil produced by the landlord, a sum of Rs.9,000/- has been paid on 23.9.1997 and vide Ext.A2 counterfoil dated 28.9.1997 a sum of Rs.6,800/- has been paid. Hence, according to him, the entire rental arrears due till then had been wiped out. Of course, in the counterfoil, the entries show that the amount paid in Ext.A1 is with respect to 1986 April to 1989 December and in Ext.A2 for the period from January, 1990 to October, 1992. The above recitals did not tally with the rental arrears claimed as per Exts.B1 and A5, i.e., that the rent is due from November, 1992 onwards. There is no possibility of the tenant remitting rental arrears for the period not demanded in the lawyer notices sent. Counsel for the revision petitioner has also pointed out the admission of PW.1 in his deposition that in

September, 1997, the above payments have been made. It is more likely that the recitals in Exts.A1 and A2 mentioning the period for which the amounts have been remitted are incorrect and the amounts paid as per Exts.A1 and A2 are for the period from November, 1992 onwards. Hence, we find that the order of eviction under Sections 11(2)(b) cannot be sustained.

4. So far as the contention under Section 11(4)(v) of the Act is concerned, it is in evidence that the electricity charges have not been paid since June 1997 to October 2000 and the electricity stood disconnected and the connection dismantled. There is no dispute about the above fact. It is the contention of RW.1 that on account of leakage of water and resultant electric shock, the electricity was kept disconnected. The above version cannot be believed in view of the fact that the same could have been rectified. Further more, the case of the revision petitioner/tenant is that he is running the business of agency in Ayurvedic Medicines; and

he has also mentioned that he is the agent of "**Dwaraka Ayurvedam, Palakkat and Arya Herbals, Trichur"**. As rightly noticed by the courts below, he has not produced any evidence to the effect that he is conducting business in Ayurvedic Medicines during the relevant period. Though he has admitted that he is keeping accounts, he has not produced any register etc. No letter of appointment of the revision petitioner as the stockist was also produced. It is virtually impossible to believe that the revision petitioner was conducting the business in the plaint schedule shop room without electric connection. The contention of the revision petitioner is that the landlords/respondents have not taken out a commission to establish the above fact. The above lapse is not sufficient to reject the evidence on record. We find no reason at all to disturb the concurrent findings of the courts below. Hence, we find that the respondents/landlords are entitled to an order of eviction under Section 11(4)(v) of the Act.

The above finding of the courts below under Section 11 (4) (v) is confirmed and the revision petition is dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

R.C.R.No.449 of 2004

O R D E R

16th January, 2007.